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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN BASLER,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0602-CR-113

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0505-FB-91588

November 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kevin Basler appeals his conviction of Burglary,¹ a class B felony, and Theft,² a class D felony, challenging the sufficiency of evidence establishing venue for those convictions.

We affirm.

The facts favorable to the convictions are that Samantha Shipley is Basler's sister. On April 29, 2005, Shipley left home to run errands. While she was gone, Charles McFarland, a neighbor of Shipley's, saw a man walk out of her house carrying an item of electronic equipment. McFarland watched as the man got into a gray pickup truck parked in the alley behind Shipley's house and drove away. McFarland watched the man get into his truck and drive away. When Shipley returned home sometime later, she noticed that her DVD player was missing. She called police and reported the missing item. Detective Martha Richardson of the Indianapolis Police Department was placed in charge of the investigation.

McFarland later learned of the theft and informed Shipley that he had seen a man leaving her house carrying what appeared to be electronic equipment. He told her the man got into a gray pickup truck and drove away. Shipley told McFarland, who did not know Basler, that her brother drove a gray pickup truck and stated "[t]hat it wasn't the first time that he had taken stuff from her." *Transcript* at 27. This information was given

¹ Ind. Code Ann. § 35-43-2-1 (West, PREMISE through 2006 Second Regular Session).

² I.C. § 35-43-4-2 (West, PREMISE through 2006 Second Regular Session).

to Detective Richardson, who assembled a photo array containing Basler's photo. McFarland chose Basler's photo as that of the intruder he had seen at Shipley's house. Basler was charged with burglary and theft. He was convicted of those charges following a bench trial. Basler challenges both convictions upon the basis that the State's evidence failed to establish that the offenses occurred in Marion County, Indiana.

"The right to be tried in the county in which an offense was committed is a constitutional and a statutory right. Accordingly, although the State is required to prove venue, it may be established by a preponderance of the evidence and need not be proven beyond a reasonable doubt." *Baugh v. State*, 801 N.E.2d 629, 631 (Ind. 2004) (internal citations omitted). Moreover, the State may establish proper venue by circumstantial evidence. *Eckstein v. State*, 839 N.E.2d 232 (Ind. Ct. App. 2005). "Thus, the State meets its burden of establishing venue if the facts and circumstances permit the trier of fact to infer that the crime occurred in the given county." *Id.* at 233.

The charging information alleging that Basler had committed burglary and theft by taking Shipley's personal property from her house alleged that he did so in Marion County, Indiana. *Cf. Kalady v. State*, 462 N.E.2d 1299 (Ind. 1984) (proof that the crime occurred in the county identified in the charging instrument ordinarily serves the purpose of proving venue). Shipley testified that after she discovered her DVD player had been taken, she called police. Michael Horn, who identified himself as an officer with the Indianapolis Police Department, was dispatched to Shipley's home in that capacity to speak with Shipley about her complaint. Detective Martha Richardson testified that she

was a detective with the Indianapolis Police Department, and she was assigned to investigate the case. She testified that, among other things, she prepared a photo array containing Basler's photo. That array was introduced into evidence on a form that included the caption, "Indianapolis Police Department." *The Exhibits* at 2. A photo array sheet attached to the array bore the logo of the Indianapolis Police Department. The foregoing was sufficient to permit a reasonable inference that the crime occurred in Indianapolis, Marion County, Indiana. *Eckstein v. State*, 839 N.E.2d 232.

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.